

302 KAR 100:020. Procedures for purchasing agricultural conservation easements or other property interests in agricultural lands.

RELATES TO: KRS 262.902, 262.904, 262.908

STATUTORY AUTHORITY: KRS 262.902, 262.908

NECESSITY, FUNCTION, AND CONFORMITY: KRS 262.908 requires the Purchase of Agricultural Conservation Easement Board to implement a Purchase of Agricultural Conservation Easement Program, including the development and promulgation of necessary administrative regulations. KRS 262.908 requires the Purchase of Agricultural Conservation Easement Corporation to promulgate administrative regulations establishing policies and procedures for purchasing easements. KRS 262.908 also requires that land is selected for purchase because it will make a significant contribution to agricultural production.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 262, terms used in this administrative regulation shall have the following meanings:

- (1) "Application" means the documentation and information submitted to the PACE Corporation by a landowner on the approved application form offering to sell or donate to the Commonwealth an agricultural conservation easement or other property interest in eligible land.
- (2) "Easement value" is defined in KRS 262.900.
- (3) "Eligible land" is defined in KRS 262.900.
- (4) "Farmland tract" is defined in KRS 262.900.

Section 2. Application Requirements. Application to the PACE Corporation. In order to be considered for purchase, a completed application shall be submitted by the landowner on the "Agricultural Conservation Easement Application" (July 15, 1995). The landowner or a duly authorized representative of the landowner may apply. The landowner shall sign the application. A separate application shall be required for each farmland tract offered for acquisition. The following information shall be included in a completed application:

- (1) Adequate identification by deed reference of the farmland tract to be considered for purchase.
- (2) A map of the property on a United States Geological Survey (USGS) Topographic Map showing the land area to be considered for purchase, as well as any contiguous acreage under the same ownership to be excluded.
- (3) A United States Department of Agriculture (USDA) Natural Resources Conservation Services Soil Map and farm plan.
- (4) A full description of the agricultural production carried out on the property including type and quantity of crops, number of livestock, acreage of land leased or used from others for agricultural production. In the event the landowner is not principally engaged in agricultural production on the farmland tract, a written statement shall be submitted stating the short and long term proposals for use of the land for agricultural production.
- (5) A statement by the landowner of any contingencies which may affect the retention of the land in agricultural production, such as death, health, or retirement of the owner, financial stress, estate settlement, or other circumstances which may cause the farmland tract to be removed from agricultural production.
- (6) Whether the property interest proposed to be conveyed to the Commonwealth is fee simple or less-than-fee-simple interest, including but not limited to, an easement, life estate, covenant, or other contractual right.
- (7) The landowner's asking price and preferred method of payment for the acquisition, including but not limited to, lump sum payment, pay out over a term of years or installment payments.
- (8) A statement by the landowner agreeing to allow inspection and appraisal of the property.

- (9) A list of any and all liens and encumbrances on the farmland tract.
- (10) Existence of any surface or mineral leases or easements.
- (11) All other information requested on the "Agricultural Conservation Easement Application."

Section 3. Application Process. (1) A representative of the PACE Corporation shall review the application to determine if it is complete. If the application is complete, a representative of the PACE Corporation shall view the farmland tract and provide the PACE Board with a preliminary evaluation of whether the farmland tract meets the minimum criteria for eligible land set forth in 302 KAR 100:010.

(2) If the application is complete and the minimum criteria is met, the application shall be evaluated in accordance with 302 KAR 100:010. If it is determined by the PACE Board that the farmland tract is eligible land, the PACE Board shall notify the landowner in writing that the farmland tract will be considered for purchase by, or donation to, the PACE Corporation or that, for reasons set forth in writing, the application is being rejected.

(3) Prior to purchase, the PACE Board shall determine the easement value of the farmland tract by appraisal:

(a) The appraisal shall be conducted by a licensed real estate appraiser who is qualified to appraise property for easement purchase. The appraisal shall be based on an analysis of comparable sales.

(b) The appraisal shall include, at a minimum, a legal description of the appraised farmland tract, description of improvements, photos of the farmland tract, sketch of the subject farmland tract, pertinent data for each comparable sale, whether the farmland tract has public or private land use restrictions, any attributes which limit the development of the farmland tract and a description of the area or neighborhood in which the farmland tract is located.

(c) The appraisal shall contain an analysis of the highest and best use of the farmland tract, the valuation methodology used by the appraiser to determine market value and farmland value, the market value, the farmland value and the easement value of the farmland tract. The value of any buildings or other improvements shall appear separately in the appraisal report.

Section 4. Purchase of Agricultural Conservation Easement or Other Property Interests. (1) If the PACE Board determines to offer to purchase an easement or other property interest on the farmland tract, the PACE Corporation shall submit a written offer to the landowner for the purchase. The offer shall be accompanied by a copy of any appraisals of the property obtained by the PACE Corporation.

(2) Within thirty (30) calendar days of receipt of the written offer, the landowner, or his authorized representative, shall:

(a) Accept the offer in which case the PACE Corporation and the landowner shall enter into a contract of sale. The contract shall be conditioned upon the approval of the PACE Board and be subject to the ability of the landowner to provide good title to the farmland tract, free of encumbrances such as liens, mortgages and other encumbrances which would adversely affect the Commonwealth's interest in the farmland tract.

(b) Reject the offer and advise the PACE Corporation that the application is withdrawn.

(c) Advise the PACE Corporation that the landowner is obtaining an independent appraisal, at the landowner's expense to determine the easement value. The appraisal shall be obtained in accordance with Section 4 of this administrative regulation. Within thirty (30) calendar days of receipt of the landowner's independent appraisal, the PACE Corporation shall notify the landowner that the PACE Corporation's original offer remains open and will not be modified, make an offer to purchase the easement for an amount that is the average between the landowner's appraisal and the PACE Corporation's appraisal, or reject the landowner's offer. If an offer to purchase is accepted, the land-

owner and PACE Corporation shall enter into a contract of sale in accordance with subsection (1)(a) of this section.

(3) Prior to conveyance of the easement, a title search shall be completed by an attorney licensed to practice law in the Commonwealth, to certify clear and marketable title prior to closing. The landowner shall be responsible for clearing all title defects. The PACE Corporation shall obtain the preparation of a property description suitable for recording the deed and, in the event that a survey is required, completion of the survey. The landowner of the subject farmland tract shall execute a deed which shall include the language required by KRS 262.914. A copy of the deed shall be submitted to the PACE Board for approval prior to recording.

(4) The purchase price shall be paid by the Commonwealth in accordance with KRS 262.904(2). The easement or other property interests may be acquired by an exchange of the interest which the Commonwealth owns in other than eligible lands for eligible lands in accordance with KRS 262.904(3).

Section 5. Reconsideration of PACE Corporation Rejection of Application. If a landowner is dissatisfied with the action of the PACE Corporation in rejecting an application, the landowner may request in writing a meeting with the PACE Board. The landowner will be notified of the next scheduled meeting of the PACE Board and will be provided the opportunity to present additional information regarding the farmland tract's value or use, or potential use, for agricultural production. The PACE Board shall consider this additional information and notify the landowner of its decision to reject or reconsider the farmland tract for purchase.

Section 6. Exemptions. (1) The provisions of this administrative regulation do not apply to the following acquisitions of an easement or other property interest by the Commonwealth:

- (a) Purchases made pursuant to KRS 262.904(4);
 - (b) Purchases of an easement or other property interest from a nonprofit land conservation organization or other qualified organization; or
 - (c) Donations of lands to the Commonwealth by gift or bequest.
- (2) Eligible lands acquired pursuant to subsection (1) of this section are subject to the provisions of KRS 262.910 through 262.918.

Section 7. Conflicts of Interest. (1) If a director of the PACE Board has an ownership interest in a farmland tract being considered for purchase by the board, the director shall abstain from any action on an official decision by the board in regard to the farmland tract in accordance with KRS 262.906(a).

(2) A director shall disclose to the PACE Board any direct or indirect ownership interest of a member of the director's family, or a business in which the director or a member of his family has an interest of more than five (5) percent, in a farmland tract proposed for purchase. A director shall abstain from any action on an official decision of the PACE Board in regard to this farmland tract if the director believes there is a substantial threat to his independence of judgment because of his personal or private interest in the property.

Section 8. Reference Material. The "Agricultural Conservation Easement Application" form (7/15/95) is incorporated by reference and is available for public inspection and copying at the office of the Agriculture Department, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696, during normal working hours of 8 a.m. to 4:30 p.m., local time. (22 Ky.R. 424; eff. 10-11-95.)